

Assembly Bill No. 2682

CHAPTER 323

An act to amend Sections 4103, 6981, 32513, 61933, 64007, 64101, 64103, 64105, 64305, 64306, and 77191 of, to repeal Sections 64107, 64108, and 64109 of, and to repeal and add Section 64106 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 14, 2012. Filed with
Secretary of State September 14, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2682, Committee on Agriculture. Agriculture.

(1) Existing law establishes the Sixth District Agricultural Association, which is known as the California Science Center, and authorizes it to establish a space age museum at its building in Exposition Park in the City of Los Angeles.

This bill would instead authorize the California Science Center to establish an air and space center at that location.

(2) Existing law imposes an annual assessment of 1% on the gross sales of all deciduous pome and stone fruit trees, nut trees, olive trees, and grapevines, including seeds, seedlings, rootstocks, and topstock, including ornamental varieties of apple, apricot, crabapple, cherry, nectarine, peach, pear, and plum, produced and sold within the state or produced within and shipped from the state by any licensed nursery dealer. Existing law provides that the Secretary of Food and Agriculture may exempt from the assessment certain species of pome and stone fruit, nut trees, olive trees, grapevines, or ornamental varieties of apple, apricot, crabapple, cherry, nectarine, olive, peach, pear, and plum if it can be demonstrated that no benefit is derived by these species from specified programs established by existing law concerning pome and stone fruit trees, nut trees, olive trees, and grapevines, as provided.

This bill would remove species of olive trees from the plants that the secretary may exempt from the assessment and instead allow the secretary to exempt certain varieties of olive trees from the assessment. The bill would also make a clarifying change.

(3) Existing law requires the Secretary of Food and Agriculture to require inspections at least quarterly of all milk products plants that pasteurize milk or milk products, manufacture cheese, or manufacture raw milk cheese, and requires that the inspection procedures include specified elements, including a review of all pasteurization records. Existing law defines "milk products plant" and excludes from that definition a retail establishment that packages dairy products in the presence of the consumer.

This bill would exclude from the definition of “milk products plant” a properly licensed retail food facility that cuts, wraps, and packages cheese, excluding cottage cheese, purchased from a licensed manufacturer of milk products, labels the products pursuant to all applicable state and federal laws, and sells the product only to consumers on the premises of the retail food facility.

(4) Existing law empowers the Secretary of Food and Agriculture to formulate a stabilization and marketing plan which includes, among other things, establishing the price to be paid by milk handlers for various classes of market milk. Class 2 market milk consists of, among other milk products, any market milk, market skim milk, or market cream used in the manufacture of market cream, homogenized market cream, sour cream, sour cream dressing, sour half-and-half or light sour cream, uncreamed, creamed, or partially creamed cottage cheese, soft fresh cheese (fromage frais), buttermilk, and yogurt. A violation of any provision regarding the stabilization and marketing of market milk, or any provision of any stabilization and marketing plan, is a misdemeanor.

This bill would add kefir to those products that are class 2 market milk. Because this bill would expand the scope of a crime, it would create a state-mandated local program.

(5) Existing law, the Dairy Council of California Law, establishes the Dairy Council of California within state government, comprised of 12 producer members, 12 handlers or producer handlers, and one member who is neither a producer, handler, or producer handler of milk. Existing law requires the secretary to prepare and mail nomination forms to all producers, producer handlers, and handlers of milk for the purpose of receiving nominations of members of the council, and to fill vacancies in the council pursuant to the council’s nominees. Existing law provides that the 12 producer members of the council may include persons that represent producers. Under existing law, the dairy council is financed through fees paid by producers, producer-handlers, and handlers. Existing law authorizes the secretary to collect these fees and to add a penalty of 10% to unpaid fees.

This bill would require all members of the council to be appointed by the secretary and would specify that the members hold office at the pleasure of the secretary. The bill would delete the provisions providing for the nomination of members of the council by producers, producer handlers, and handlers of milk and instead would require members of the council to be nominated and appointed pursuant to procedures recommended by the council and approved by the secretary. The bill would authorize the secretary to consider recommendations from the remaining members of the council to fill vacancies. The bill would delete the provision allowing for representatives of producers to be appointed as producer members of the council. The bill would define “handler” to include persons who secure custom processing services on an ongoing basis. The bill would also authorize the secretary to enforce as well as collect the fees and to assess interest of 1% of the unpaid balance for each 30 days the fees are unpaid.

(6) Existing law establishes the California Walnut Commission, and requires that the commission become inoperative at the end of any marketing year in which targeted export assistance funds provided by the federal government have been permanently terminated, unless a referendum vote conducted among walnut producers approves the continuation of the commission. Existing law provides that funds are considered to be permanently terminated when the federal government does not provide targeted export assistance funds in 2 consecutive budget years.

This bill would change when funds are considered to be permanently terminated to when the federal government does not provide targeted export assistance funds in 3 consecutive budget years.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 4103 of the Food and Agricultural Code is amended to read:

4103. The California Science Center may establish an air and space center in its building at Exposition Park in the City of Los Angeles.

SEC. 2. Section 6981 of the Food and Agricultural Code is amended to read:

6981. (a) An annual assessment of 1 percent shall be levied on the gross sales of all deciduous pome and stone fruit trees, nut trees, olive trees, and grapevines, including seeds, seedlings, rootstocks, and topstock, including ornamental varieties of apple, apricot, crabapple, cherry, nectarine, olive, peach, pear, and plum, produced and sold within the state or produced within and shipped from the state by any licensed nursery dealer. For packaged or containerized stock, the assessment shall be levied on the producer's bareroot price of the plants.

(b) The secretary, as appropriate, and on the recommendation of the board established pursuant to Section 6988, may exempt from the assessment certain species of pome and stone fruit, nut trees, grapevines, or varieties of olive trees, or ornamental varieties of apple, apricot, crabapple, cherry, nectarine, olive, peach, pear, and plum if it can be demonstrated that no benefit is derived by these species or varieties from programs described in subdivision (d).

(c) The assessment shall be applied at the point of sale where the nursery stock is sold by a producer to persons other than California producers of nursery stock that is subject to assessment under subdivision (a).

(d) The secretary may set the assessment at a lower percent to cover the costs necessary to implement and carry out all department programs established pursuant to Article 7 (commencing with Section 5821) of Chapter

8 of Part 1 concerning the registration and certification of pome and stone fruit trees, nut trees, olive trees, and grapevines; the University of California foundation plant materials service activities concerning pome and stone fruit trees, nut trees, olive trees, and grapevines; and other activities related to the development of planting materials for pome and stone fruit trees, nut trees, olive trees, and grapevines.

SEC. 3. Section 32513 of the Food and Agricultural Code is amended to read:

32513. “Milk products plant” means any place in which a person engages in the business of handling, receiving, manufacturing, freezing, processing, or packaging milk, or any product of milk or engages in the business of manufacturing, freezing, or processing imitation ice cream or imitation ice milk. “Milk products plant” does not include a properly licensed retail food facility that does either of the following:

(a) Packages dairy products in the presence of the consumer.

(b) Cuts, wraps, and packages cheese, excluding cottage cheese, that is purchased from a licensed manufacturer of milk products, labels the products pursuant to all applicable state and federal laws, and sells the product only to consumers on the premises of the retail food facility.

SEC. 4. Section 61933 of the Food and Agricultural Code is amended to read:

61933. Class 2 comprises any market milk, market skim milk, or market cream used in the manufacture of market cream, homogenized market cream, sour cream, sour cream dressing, sour half-and-half or light sour cream, uncreamed, creamed, or partially creamed cottage cheese, soft fresh cheese (fromage frais), buttermilk, kefir, and yogurt. Class 2 also comprises any market milk, market skim milk, or market cream used in the manufacture of any product for which a definition and standard is prescribed in Division 15 (commencing with Section 32501), except any product that is included in class 1, class 3, class 4a, or class 4b.

SEC. 5. Section 64007 of the Food and Agricultural Code is amended to read:

64007. “Handler” means any person that, as owner, agent, or broker, purchases, or otherwise acquires from a producer, producer-handler, or another handler, possession or control of milk, skim milk, or cream, in the form of unprocessed milk, skim milk, or cream, or in any other unprocessed form, for the purpose of processing it, and includes any person who secures custom processing services on an ongoing basis.

SEC. 6. Section 64101 of the Food and Agricultural Code is amended to read:

64101. There is in the state government the Dairy Council of California which shall consist of not less than 24, nor more than 25 members. All members of the council shall be appointed by the secretary and may hold office at the pleasure of the secretary. The membership of the council shall be as follows:

(a) There shall be 12 members that are actually engaged in the production of milk. These 12 members are the producer members of the council.

(b) There shall be 12 members that are handlers or producer-handlers of dairy products. These 12 members are the handler members of the council.

(c) Upon the recommendation of the council, the secretary may appoint one person who is neither a producer, handler, or producer-handler, and who shall represent the public generally.

SEC. 7. Section 64103 of the Food and Agricultural Code is amended to read:

64103. Officials or members, otherwise qualified, of corporations, associations, and other business units, which are actually engaged in business as producers, handlers, or producer-handlers of dairy products, are eligible to be members of the council.

SEC. 8. Section 64105 of the Food and Agricultural Code is amended to read:

64105. Any vacancy occurring during the unexpired term may be filled by the secretary for the unexpired term. In filling a vacancy, the secretary may consider recommendations from the remaining members of the council. The director may remove any member of the council for cause deemed sufficient by him and upon such removal there shall be a vacancy which shall be filled in the manner as provided in this section for the unexpired term.

SEC. 9. Section 64106 of the Food and Agricultural Code is repealed.

SEC. 10. Section 64106 is added to the Food and Agricultural Code, to read:

64106. Members of the council shall be nominated and appointed pursuant to procedures recommended by the council and approved by the secretary. The procedures may include, but are not limited to, nominations, preference voting, and district representation.

SEC. 11. Section 64107 of the Food and Agricultural Code is repealed.

SEC. 12. Section 64108 of the Food and Agricultural Code is repealed.

SEC. 13. Section 64109 of the Food and Agricultural Code is repealed.

SEC. 14. Section 64305 of the Food and Agricultural Code is amended to read:

64305. Fees established and assessed under this chapter may be enforced and collected by the secretary through direct payment or through pool accounting procedures established by the secretary under Chapter 3 (commencing with Section 62700).

SEC. 15. Section 64306 of the Food and Agricultural Code is amended to read:

64306. To the amount of fees which are unpaid when due, the secretary may add a penalty of 10 percent. In addition, the secretary may assess interest at a rate of 1 percent of the unpaid balance for each 30 days the assessment is unpaid.

SEC. 16. Section 77191 of the Food and Agricultural Code is amended to read:

77191. This chapter shall become inoperative at the end of any marketing year in which targeted export assistance funds provided by the federal government have been permanently terminated, unless, pursuant to the

procedures described in Section 77193, the producers approve the continuation of the commission. Funds are permanently terminated within the meaning of the previous sentence when the federal government does not provide targeted export assistance funds in three consecutive budget years.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.